

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER  
OF  
EDUCATION

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**Edward Charland**

v.

**Pawtucket School Committee**

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**DECISION**

**Held:** The school committee has failed to prove by a preponderance of the evidence that good and just cause exists for the dismissal of Mr. Charland. Mr. Charland is to be restored to his position with back pay. Since Mr. Charland was under a duty to mitigate his damages, any sums he earned from other work are to be deducted from this award of back pay.

DATE: August 11, 2000

## TRAVEL OF THE CASE

The Pawtucket School Committee has dismissed Edward Charland, a tenured physical education teacher, from his position in the public schools of Pawtucket. It was alleged that Mr. Charland forced a fully clothed student into a shower and allowed this student—Student **R**—to go to his next class soaking wet. It is also alleged that Mr. Charland lied to the Superintendent about this incident. These events, along with certain other prior disciplinary actions relating to Mr. Charland, were found to constitute good and just cause for Mr. Charland’s dismissal. R.I.G.L.16-13-3 Mr. Charland has appealed this matter to the Commissioner of Education. R.I.G.L.16-13-4

## STANDARD OF REVIEW

This matter is before the Commissioner for a *de novo*, independent decision on whether or not Mr. Charland committed the acts that are alleged to provide the basis for his dismissal. *Slaterry v. Cranston*, 116 R.I. 252, at 263(1976) The burden of proof is on the school committee to show by a preponderance of the evidence that Mr. Charland committed the acts alleged. *Audi v. Baillargeon*, 121 R.I. 455 (1979)

## BACKGROUND—FINDINGS OF FACT

Justice Scalia of the United State’s Supreme Court has observed that:

School sports are not for the bashful. They require “suing up” before each practice or event, and showering and changing afterwards. Public school locker rooms, the usual sites for these activities, are not notable for the privacy they afford. The locker rooms in Vernonia are typical: no individual dressing rooms are provided; shower heads are lined up along a wall, unseparated by any sort of partition or curtain; not even all the toilet stalls have doors. As the United States Court of Appeals for the seventh Circuit has noted, there is an element of “communal undress” in athletic participation.<sup>1</sup>

Still, Justice Scalia’s observations are not of universal applicability. The record before us established that at Goff Junior High School in Pawtucket it was the rule that almost all students took showers in T-shirts and gym shorts or some other form of shower attire. It was extremely rare for a student to go “skinny dipping” in the shower room. Students were expected to bring a towel and a change of underclothing to each gym class so that they would be able to take a shower in appropriate attire.<sup>2</sup>

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<sup>1</sup> Vernonia School District 47J v. Acton, 515 U.S. 646 (1995)

<sup>2</sup> “But what has changed, the boys today I find to be very modest and protective of their privacy. Boys at that age, I believe 12, they’ll wear a T-shirt, they’ll wear their gym trunks, they’ll wear an extra pair of

We note that the school district policy of forcing children to shower, even in their clothes, is at the source of the problem in this case—not just the teacher’s implementation of the policy. This policy should be carefully examined to determine whether it is in the best interest of students—particularly at the middle school age.

It was not uncommon for middle school students to resist taking a shower. Since shower evasion was a constant problem Mr. Charland had to make special efforts to ensure that students, in accordance with school rules, took a shower after gym class. The Pawtucket superintendent of schools had sent a memo to all gym teachers advising them that: "Showers should be supervised by the teacher in their respective classes." It was not unusual for students to slip into the shower room, wet their hair, and claim that they had taken a full shower. Students were admonished that a full shower meant getting completely wet. In accordance with school policy there would be shower test days where students would be checked by the Gym instructor to be sure that they had gotten completely wet in the shower. This was determined in part by how wet the students shower attire was. Many years of experience—28 to be exact--had made Mr. Charland an expert at detecting shower evasion. It should be recalled that a shower was required by school rules, and if a student failed to take one Mr. Charland might well be held accountable for this dereliction.

Given the structure of the facilities Mr. Charland had to work with, it was impossible for him to observe all his students at all times. The Gym was on one floor and the drying room was on another. The showers could not be viewed from the locker room. The controls for the gang showers were located in a closet. When the showers were being turned on, the teacher, if he were the one starting the showers, could not see the class. At times Mr. Charland therefore had a student start the showers. On the day we are dealing with, Mr. Charland operated the shower controls himself since there was a potential problem with the temperature of the water.

The locker room was extremely cramped so Mr. Charland allowed students who had completed their showers to go back down to the gym and quietly shoot baskets until it was time to leave for the next class. All students were expected to leave from the gym rather than from the locker room exit—but some students would leave by the locker room exit, which was more convenient. While teachers were expected to keep their class in view, this was not always physically possible for Mr. Charland to do. He could not view the students in the locker room, the gym, and the showers at the same time. No matter what he did there would be some students, at some times, who would be outside of his view. At least some of these students might attempt to avoid taking a shower—something that Mr. Charland was supposed to be vigilant against.

The locker room was a noisy place filled with boisterous students who were not always completely cooperative with every school rule. At times Mr. Charland had to tell a student more than once to comply with school rules.

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underwear, some would wear shower clogs, some students would wear socks, and some would—not all. I would think the exception today would be ...for someone to go in without any articles of clothing..."

TESTIMONY OF: Charland

## THE INCIDENT—FINDINGS OF FACT

In accordance with his usual policy Mr. Charland asked the students at the beginning of gym class whether any of them lacked the needed clothing to participate in gym class and to take a shower. The Student **R** was silent. Mr. Charland informed the class that it was a “shower test day.” This meant that Mr. Charland would take special care to be sure that all students took a proper and thorough shower. We accept as true the following testimony from Mr. Charland:

Now, part of the instruction for the shower test, the only way that I can observe a shower test is to have the boys wait until I get into a position to observe what’s going on and take your shower. Now, many times, because the boys were allowed to go downstairs and shoot baskets after showers, lots of times the boys will run in, take a shower, and get out. So part of the supervision is to observe who’s already taken a proper shower and who has not. ***But any student who enters the shower before I get to my position for supervision can be told by me to go back into the shower and take a shower if I feel that they have not taken a shower for the shower test. (Emphasis added)***

Students knew from the orientation process that they could be sent back to take a shower if Mr. Charland had doubts about whether they had really taken a shower. Mr. Charland frequently had to send boys back to take a proper shower. Some would enter the shower, just wet their hair, and then try to claim that they had taken a shower. Other students might simply get some part of their attire wet and pretend that they had taken a proper shower. Mr. Charland’s 28 years of experience have given him great skill in detecting such subterfuges. He testified and we accept as true that:

The rule for clothing in the shower, I’m not telling them what to wear or what not to wear. I’m not making no judgments whatsoever. If you choose to wear an article of clothing into the shower, you have to get it wet. And its very common for me to say, “You’re not wet enough. Get back.” Now, if it’s gym trunks, you can tell the front and back of the clothing is wet or dry. There’s darkness, lightness, it’s dripping, and so forth. With a T-shirt, you can see specific areas. If they run through the shower, the front of the shirt is wet, the back of the shirt is not. “You’re not wet enough.” If they just run and stick their back in the shower, the front is dry. You say “Look, you’re not wet enough.” If they just go in the shower, under the arm is usually the last place to get wet.... You have to understand Mr. Hearing Officer; part of the job is hygiene. If you’re going to wear something, it has to get wet.”

During the school year in question there were least eleven times when students refused to take a shower. In each of these cases Mr. Charland directed the student to take a

shower. Continued refusal to take a shower was dealt with by referring the student to the principal for discipline.

The gravamen of this case is whether or not Mr. Charland “forced” student **R** to wear school clothes while taking a shower. At the school committee level there was testimony that Mr. Charland had bodily forced Student **R** into the shower. At the hearing before the Commissioner the proponents of this testimony repudiated it and admitted that this prior testimony was not the truth. The only thing Mr. Charland ever did was to order student **R** to take a shower.

The complainant student, Student **R**, testified that:

- 1) Mr. Charland was about 10 feet from him during the incident now at issue.
- 2) Mr. Charland never raised a hand to him.
- 3) Mr. Charland never grabbed him and pushed him into the shower.
- 4) Mr. Charland never told him to wear his school clothes into the shower

We find these four statements to be true.

Student **R** testified that his school clothes consisted of blue jeans and a white T-shirt with a colorful picture on it. His gym clothes were gym pants and a white T-shirt. We find these statements to be true.

A witness to the incident, Student **N**, testified that it was a shower test day and that student **R** “went into the shower and got his head wet and came out.” Student **N** testified that on occasion he himself had evaded taking a proper shower and that Mr. Charland had sent him back in to take a shower: “Yeah, He’s done that to me a couple of times. Nothing really serious. He just says, “Go back in.” We credit these statements of Student **N**.

Under oath Student **N** reputed his own prior written statement that Mr. Charland said to student **R**, “to go back in [the shower] and to not bother taking off [your] shirt.” Student **N** also admitted that he was not telling the truth when he testified before the school committee under oath that Mr. Charland had pushed Student **R** into the shower. Given these facts we can find no real evidence in the testimony of Student **N** that Mr. Charland did anything wrong. In fact the testimony of Student **N** is not particularly inconsistent with the notion that Student **R** tried to evade taking a proper shower, that Mr. Charland caught Student **R** trying to do this, and that Mr. Charland therefore ordered Student **R** to take a proper shower. This of course is exactly what Mr. Charland was supposed to do.

Student **Z** testified that Mr. Charland “forced [Student **R**] with his voice” to take an additional shower or showers. Of course if Mr. Charland believed that a student had not taken a shower he was supposed to order the student to do so. No one ever testified that Mr. Charland threatened, swore at, or browbeat Student **R**. In fact the weight of the testimony from all students, including student **R**, leads to the conclusion that Student **R** did not take a proper shower the first time and that Mr. Charland made the correct decision in ordering Student **R** to take another shower.

We think that assigning the strongest possible value to everything said by Student **R** we have a case where:

- Student **R** pretended to take a shower. {Shower 1}
- Mr. Charland caught him doing this.
- Student **R** entered the shower again for, in his own words “4 or 5 seconds” {Shower 2}
- Mr. Charland sent back into the shower. [Shower 3]
- When Student **R** was still not wet he was sent back a 4<sup>th</sup> time.

All of this was exactly what Mr. Charland was paid to do. This case comes down to an argument that Mr. Charland knew or should have known that that Student **R** was wearing his “school” T-shirt rather than his “gym” T-shirt when he entered the shower. Student **R** testified that he never told Mr. Charland that he was dressed and ready to go to class. Since student **R** never said that he was wearing his only dry T-shirt into the shower we can hardly fault Mr. Charland for being unaware of this fact. In fact Student **R** had sufficient time to remove his blue jeans before entering the shower. It was a completely normal event to see a student enter the shower room wearing a dry T-shirt and gym shorts.

On cross-examination Student **R** admitted that his gym T-shirt, which he ostensibly had worn to take his first shower, was still dry except for some perspiration. In fact why he did not put this dry T-shirt on in preference to a soaking wet one is a mystery that was never resolved in his testimony. At one point he testified that he took his first shower in his gym shirt, at another point he testified that he did not wear any shirt for his first shower, and after a recess in the hearing he testified that he did wear his gym shirt into the shower.<sup>3</sup> But if he wore this gym shirt into the shower and if he showered properly this gym shirt would have been wet. Instead Student **R** testified that it was dry. None of this hangs together.

Another student, Student **G**, testified that there was no way for Mr. Charland to know that Student **R** had taken a shower.

In sum our conclusion is that Mr. Charland did nothing wrong by directing Student **R** to take a shower. Mr. Charland:

- Never ordered Student **R** to wear school clothes into the shower.
- Had no way of knowing that the T-shirt Student **R** was wearing was **R**'s school T-shirt.
- Never browbeat or threatened Student **R**.

We credit Mr. Charland's statement that he did not see Student **R** leave through the locker room exit. Mr. Charland could not be everywhere.

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<sup>3</sup> Student **G**, testified that Student **R** was wearing a gym T-shirt during the first shower. The consensus of student testimony is that Student **R** did not shower properly the first time he went into the shower.

## CONCLUSION

Given these facts we cannot find that Mr. Charland did anything wrong. We therefore must also find that Mr. Charland did not lie when he described his side of the story to school officials. It is our opinion that the school committee has failed to prove by a preponderance of the evidence that good and just cause exists for the dismissal of Mr. Charland.

## REMEDY

Mr. Charland is to be restored to his position with back pay. Since Mr. Charland was under a duty to mitigate his damages, any sums he earned from other work is to be deducted from this award of back pay.

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Forrest L. Avila  
Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

DATE: August 11, 2000